

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THOMAS FINLEY,)	
)	
Movant,)	
)	
v.)	No. 4:09CV01339 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

 This matter is before the Court on movant's Rule 60(b) motion to overturn the previous denial of his § 2255 motion. The motion will be denied.

 First, the Clerk of Court opened this as a new case at movant's insistence. Movant previously filed a Rule 60(b) motion in a previous case, Finley v. United States, 4:04CV1655 ERW, which the Court summarily denied. Movant now insists that the Rule 60(b) motion should have been opened as a new case. Movant is incorrect. Motions under Rule 60(b) do not open new cases; they are filed in existing cases.

 Second, it is quite obvious that movant is simply trying to circumvent the AEDPA's restriction on filing successive § 2255 motions by creatively titling his action as coming under Rule 60(b) rather than § 2255. This is not allowed. E.g., United States v. Farley, 971 F. Supp. 184, 185 (E.D. Pa. 1997). The form of relief movant

seeks is available only under § 2255. As such, the Court will construe the motion as coming under that section. Movant has already submitted several § 2255 motions to this Court. See Finley, 4:04CV1655 ERW.

For these reasons, the Court finds that this action is successive under § 2244. As a result, the Court will summarily dismiss this case pursuant to Rule 4 of the Rules Governing § 2255 Cases.

Accordingly,

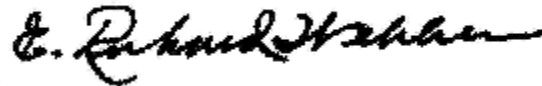
IT IS HEREBY ORDERED that this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

IT IS FURTHER ORDERED that movant's "motion to correct classification of motion" [#2] is **DENIED**.

An Order of Dismissal shall accompany this Order.

Dated this 3rd Day of September, 2009.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE